

1
2 UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4 OAKLAND DIVISION
5

6 DENISE SIZOO, an individual,

7 Plaintiff,

8 vs.

9 OLYMPUS MORTGAGE COMPANY, a
10 Delaware corporation, et al.,

11 Defendants.

Case No: C 11-2561 SBA

ORDER

Docket 7, 17

12
13 The parties are presently before the Court on Defendants' motion to dismiss,
14 pursuant to Federal Rule of Civil Procedure 12(b)(6), which is set for hearing on November
15 1, 2011. Dkt. 7. Under the version of Local Rule 7-3 in effect at the time the motion was
16 filed, any opposition or statement of non-opposition had to be filed no later than twenty-one
17 days before the noticed hearing date. As such, pro se Plaintiff's response to the instant
18 motion should have been filed by no later than October 11, 2011. Paragraph 6 of the
19 Court's Standing Orders expressly warns as follows: "**Failure to File Opposition:** The
20 failure of the opposing party to timely file a memorandum of points and authorities in
21 opposition to any motion shall constitute a consent to the granting of the motion." Dkt. 17
22 at 5. Notwithstanding the requirements of Civil Local Rule 7-3, and the Court's warnings
23 in its Standing Orders, Plaintiff has filed nothing in response to the pending motion.

24 "Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss an
25 action for failure to comply with any order of the court." Ferdik v. Bonzelet 963 F.2d
26 1258, 1260 (9th Cir. 1992). As such, the failure to file an opposition to a motion to dismiss
27 in the manner prescribed by the Court's Local Rules is grounds for dismissal. Ghazali v.
28 Moran, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam). Nevertheless, the Court will sua sponte

1 afford pro se Plaintiff an additional opportunity to file a response to Defendants' motion to
2 dismiss. While the Court does not countenance Plaintiff's disregard of the Local Rules, the
3 Court grants such extension in consideration of less drastic alternatives to dismissal. See
4 Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002). Nonetheless, Plaintiff is warned
5 that the failure to file an opposition by the deadline set by the Court will be deemed
6 grounds for dismissing the action under Rule 41(b), without further notice. Accordingly,

7 **IT IS HEREBY ORDERED THAT:**

8 1. Plaintiff shall file her opposition to Defendants' motion to dismiss by no later
9 than **November 4, 2011**. If Plaintiff does not intend to prosecute this action, she should file
10 a stipulation for dismissal under Rule 41(b), a request for dismissal under Rule 41(a), or a
11 statement of non-opposition by that deadline. The failure to timely comply with this Order
12 will result in the dismissal of the action. If applicable, Defendants shall file a reply by no
13 later than **November 11, 2011**.

14 2. The motion hearing and Case Management Conference currently scheduled
15 for November 1, 2011 are CONTINUED to the next available date of **November 15, 2011**
16 **at 1:00 p.m.** Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-
17 1(b), the Court, in its discretion, may resolve the motion without oral argument. The
18 parties are advised to check the Court's website to determine whether a court appearance is
19 required.

20 **IT IS SO ORDERED.**

21
22
23 Dated: October 25, 2011


SAUNDRA BROWN ARMSTRONG
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 DENISE SIZOO,

5 Plaintiff,

6 v.

7 OLYMPUS MORTGAGE COMPANY et al,

8 Defendant.
9 _____/

10 Case Number: CV11-02561 SBA

11 **CERTIFICATE OF SERVICE**

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
13 Court, Northern District of California.

14 That on October 27, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
16 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
17 located in the Clerk's office.

18 Denise Sizoo
19 4733 Stonehedge Drive
20 Santa Rosa, CA 95405

21 Dated: October 27, 2011

Richard W. Wieking, Clerk

22 **By: LISA R CLARK, Deputy Clerk**
23
24
25
26
27
28